

Consent Decree: *United States v. BP America Production Company fka Amoco Production Company, Cam West, Inc., and Cam West Limited Partnership*

## Section IX: Appendix 8

1. This Appendix describes SEP No. 2 in this Decree, which addresses the purchase and installation of a 12-inch diameter main pipeline to replace the 6-inch diameter main pipeline between the supply wells and the tank at the Arapaho Public Water System, managed by the Northern Arapaho Utility Organization ("NAUO"), which the Northern Arapaho Tribe ("Tribe") will arrange to purchase and install pursuant to a separate contract among the Defendants and Tribe.
2. The anticipated environmental and public health benefits resulting from the performance and satisfactory completion of this SEP include the following:

This project will replace undersized segments of pipeline at the Arapaho Public Water System with segments that are wider in diameter, which will help to address and alleviate water shortages by increasing the system's capacity to deliver a higher quantity and potentially improved quality of water to its customers. Water shortages or breaks in the pipeline at the public water system may present an imminent and substantial endangerment to the public health of the residents and other persons served by the public water system. A water shortage or break in the pipeline may cause a loss of pressure in the distribution system, which can cause infiltration of water from outside the pipes to the inside through cracks, breaks, or joints in the distribution system that are common in all water systems. Such infiltration and other potential system malfunctions carry a high potential that fecal contamination or other disease-causing organisms could enter the distribution system. Fecal coliform and E. Coli are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely-compromised immune systems.

This project will provide health benefits by ensuring better quality drinking water to the approximately 3,200 people now served and those served in the future by the Arapaho Public Water System.

3. This specific project is further described in the attached correspondence from NAUO, which presents a preliminary cost estimate of \$242,370.00 (the costs for the telemetry

unit are deleted from this estimate because that project is addressed elsewhere). Costs associated with this SEP may be more or less than this preliminary cost estimate. The Defendants will contract with the Tribe to implement this SEP because the NAUO has the capability and equipment to do this work, and has recently done a similar project at the Ethete Water Treatment Plant. In addition, the Tribe intends to obtain engineering and design work for this project under a separate contract between the Tribe and/or NAUO and the vendor/contractor; the Tribe and NAUO do not intend that Defendants be parties to this contract. This SEP potentially includes materials, labor and overhead costs related to the specific work to be done under the SEP; the Tribe and/or NAUO may determine to remove labor and/or overhead costs from this SEP. No more than \$245,000.00 of the SEP Funds may be applied to this SEP. In addition to any other requirements under this Appendix, the Tribe and/or NAUO are required to provide specific documentation regarding all proposed expenditures of SEP Funds for labor and overhead costs that demonstrate the direct relationship of these costs to the specific SEP, before the United States will approve any payment for these costs from SEP Funds.

4. Critical Milestones: Unless the Parties specifically agree otherwise in writing, the Critical Milestones for this SEP are as follows:
  - a. No later than 60 days after Defendants have deposited all SEP Funds in the escrow account described in Section XI.33. of the Decree, the Tribe and/or NAUO shall prepare one all-inclusive purchase order for the project, identifying all engineering and design services and equipment to be purchased, describing the required installation of this equipment, and identifying any vendor or Tribal contractor, and shall provide such purchase order to the United States and Defendants. The purchase order shall also itemize all specific Tribal labor and overhead costs allowed under this Appendix for which reimbursement is claimed., including Tribal SEP Coordinator fees. All applications for these costs should be made by use of a form containing the types of information required by OMB Form SF 270, and shall be subject to paragraph 6 below.
  - b. Defendants will review and approve the purchase order. No later than 14 days after the United States notifies Defendants of its review of the purchase order, Defendants will cause the approved purchase order, along with a copy of this Appendix and the relevant portions of the Decree addressing SEPs, to be sent to the Tribe, who will be instructed to bill the SEP Escrow Agent on a monthly basis, with all final invoices to be submitted within 60 days after the SEP is completed. Defendants are responsible for ensuring that the purchase order is consistent with the SEPs and this Appendix and may consult with the United States as appropriate.

- c. The installation and any other associated work required to be done under the approved purchase order shall be completed no later than 90 days after the Tribe has received the approved purchase order. This time period, and any other deadline in these Critical Milestones, may be adjusted due to weather conditions, and may be adjusted if this deadline and/or related period for work do not fall within the normal construction season applicable to such a project (generally mid-March through the end of October). In addition, this SEP may be performed in connection with SEP No. 3 and performance deadlines may be modified in accordance with the deadlines for SEP No. 3. See Appendix No. 9 to this Decree. In no event, however, shall any time period be adjusted beyond the completion date set forth in Section XI.30 of the Decree.
  - d. The Tribe shall submit invoices to the Escrow Agent, pursuant to the deadlines set forth in Paragraph 4.b., above, which invoices will be approved by the Defendants if consistent with the approved purchase order. The Escrow Agent will pay the approved invoices submitted by the Tribe once per month directly from the SEP Funds. Total payments by the Escrow Agent shall not exceed the amount on the approved purchase order.
  - e. This SEP will be deemed to have been performed and satisfactorily completed pursuant to Section IX.32. of the Decree once the requirements of Subparagraph 4.d have been met and EPA accepts the corresponding Joint SEP Completion Report pursuant to Section XI.39.a..
- 5. If the above Critical Milestones are not complied with in a timely manner due to delays by vendors, Tribal contractors, Tribal authorities, or Tribal personnel, the United States has the authority in its unreviewable discretion to determine that the SEP is infeasible and shall not proceed. Pursuant to Section XI. 34 of the Decree, all SEP Funds shall then be directed to another of the SEPs described in this Decree or paid to the United States pursuant to Section XII.48.a.
  - 6. Unless the United States and Defendants specifically agree otherwise, Tribal costs that may not be paid from SEP Funds include: project support fees, including those fees that cover the cost of a portion of the salaries and benefits of those Tribal employees associated with project administration and direct costs such as printing, copying, advertising, accounting fees, and the salary of any project officer(s) specifically employed or assigned by the Tribe to work on any SEP. As set forth above, this SEP allows SEP Funds to be used for specific labor and overhead costs.
  - 7. Defendants are not responsible for obtaining permits from any applicable governmental entity, including but not limited to Tribal permits and State permits. If any permits are

required for this SEP, responsibility for obtaining permits rests with the Tribe. The United States will consider any delay in obtaining or failure to obtain a permit under Section XI.34. of the Decree.

8. In order for this SEP to be performed and satisfactorily completed, the Tribe, and their contractors, consultants, and other employees and agents working on the SEP may need access to those areas of the reservation necessary to perform and complete the SEP. If such access is needed by Tribal contractors, consultants, vendors, or other agents and employees engaged by the Tribe to work on the SEP, and the Joint Business Council for the Tribes or other applicable authorities have not granted timely entry and access to them, the Tribe must promptly notify the United States and the Defendants. Further, Defendants must notify the United States promptly if they experience any delays in obtaining relevant information, procedures, access or timely assistance from the Tribe.
9. The Defendants and the Tribe have entered into a separate contract regarding performance of the SEP that allocates duties, responsibilities and liabilities as between the Tribe and the Defendants. The separate contract between the Defendants and the Tribe states that any disputes or issues regarding the equipment or its installation or operation shall be resolved solely between the Tribe and its contractors or vendors. The existence of and the failure to resolve such disputes promptly may render completion of the SEP infeasible pursuant to Section XI.30. and Section XII.48.a.
10. The Parties may change the Critical Milestones in this Appendix if they do so in writing. The agreed-upon changes shall be enforceable under the Decree upon their approval by the United States.
11. The Defendants' contract with the Tribe may contain additional terms for the administration and implementation of this SEP.
12. A copy of this Appendix has been provided to the Tribe(s) and the applicable Utility Organization.

**NORTHERN ARAPAHOE UTILITIES****Environmental Health & Engineering**

P.O. Box 8583  
Ethete, Wyoming 82520  
(307) 332-6120 Ext 34  
Fax (307) 332-5543

Michelle Jalazo (8ENF-L)  
U.S. EPA Region 8  
999 18th Street, Ste. 300  
Denver, CO 80202-2466

Dear Michelle,

The following cost estimate for the proposed "Arapaho Pumps to Tank Project" includes labor and material cost. This estimate is derived using the RSMMeans estimating booklet. RSMMeans is an industry standard booklet used in the construction industry for estimating cost for construction projects.

Preliminary Estimate

Twelve Inch Line From Arapaho Pumps to Tank

Estimated Cost

Item Description	Quantity	Unit	Unit Cost	Total Cost
Water Line	6864	L.F.	26.50	\$181,896.00
Tap Appurtenances	2	EA	2,000.00	\$4,000.00
Telemetry System	1	EA	15,000.00	\$15,000.00
Valves	2	EA	2,500.00	\$5,000.00

**SUBTOTAL**

**CONSTRUCTION**

\$205,896.00

Design 15%

\$30,884.40

10% Owners Coordination

\$20,589.60

**TOTAL**

\$257,370.00

The Northern Arapaho Utilities is submitting this quote as the actual cost of construction for the proposed project. We anticipate the construction to take approximately two months to complete.

Please contact the NAU Office at 307-332-6120 if there are further questions.

Sincerely,

  
Travis C. Brockie, EIT

Northern Arapaho Utilities

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QUOTE DATE 9-3-04

JOE \_\_\_\_\_

ARCHITECT \_\_\_\_\_

**F.O.B.** \_\_\_\_\_

1. This question is designed for information only. Prices and availability only as it terms are subject to change without any notice. No refund possible on this item.
2. This question is for information purposes only and applies to the individual only.
3. The prices are subject to change without notice, and also subject to any Federal, State, city or other laws that may apply.
4. We are not responsible for damages resulting from errors, omissions, delays or cancellations caused by the service.
5. This question is in and is a contract. A contract and security agreement are made by signature of the buyer on this item.
6. When placing your order on this material, please refer to this question.

QUAN	SIZE	DESCRIPTION	PRICE	UNIT	EXTENSION	DISC.	TOTALS
6880'		12" DR-18 C-900 PVC pipe	15. <sup>00</sup>	FT			
2		12" M.J. Gate Valve	1,360. <sup>00</sup>	EA			
2		Buffalo Boxes	106. <sup>65</sup>	EA			
pipe is stock for 2 weeks							

pipe is stuck for 2 weeks

### CUSTOMER ACCEPTANCE

JR  
QUOTED BY